

## **Kottayam Electric Supply Agency (Undertaking) Acquisition Act, 1980**

**3 of 1980**

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## **Kottayam Electric Supply Agency (Undertaking) Acquisition Act, 1980**

**3 of 1980**

An Act to provide for the acquisition of the undertaking of the Kottayam Electric Supply Agency. WHEREAS the services offered by the Kottayam Electric Supply Agency, which is engaged in the supply of electrical energy in the areas falling under the jurisdiction of the Kottayam Municipal Council, has been consistently inadequate, irregular and unsatisfactory; AND WHEREAS an amount of one hundred and twenty six lakhs rupees is due from the licensee to the Kerala State Electricity Board by way of arrears of price of energy purchased from the Board for distribution; AND

WHEREAS in the opinion of the Government the financial position of the licensee is such that he is unable to efficiently discharge the duties and obligations imposed upon him by the license; AND WHEREAS such inadequate and irregular supply of energy has hampered and will continue to hamper the industrial and agricultural growth of the area of supply; AND WHEREAS it is necessary to acquire the undertaking of the licensee by the Government in order to ensure efficient, regular and adequate supply of energy to the consumers; BE it enacted in the Thirtyfirst Year of the Republic of India as follows:-

## **1. Short Title And Commencement :-**

(1) This Act may be called the Kottayam Electric Supply Agency (Undertaking) Acquisition Act, 1980.

(2) It shall be deemed to have come into force on the 13 th day of February, 1980.

## **2. Definitions :-**

In this Act, unless the context otherwise requires,-

(a) appointed day means the date on which this Act comes into force;

(b) Board means the Kerala State Electricity Board constituted under section 5 of the Electricity Supply Act;

(c) document, in relation to the undertaking, includes its books, accounts, registers, maps, plants drawing, records if survey and all other documents of whatever nature relating to the undertaking;

(d) Electricity Act means the Indian Electricity Act, 1910 (Central Act 9 of 1910);

(f) fixed assets includes works, spare parts, stores, stocks, instruments, tools, motor and other vehicles, office equipments and furniture;

(g) license means the Kottayam Electric Licence, 1105, granted under the Travancore Electricity Act of 1097 M.E;

(h) lisensee means the holder of the license;

(i) prescribed means prescribed by rules made under this Act;

(j) undertaking means the undertaking of the Kottayam Electric Supply Agent;

(k) works includes electric supply lines and any lands, buildings, workshops, projects, machinery, plants or apparatus required to supply electricity and to carry into effect the object of the licence;

(l) words and expressions used but not defined in this Act and

defined in the Electricity Act or the rules made under that Act shall have the meanings respectively assigned to them in that Act or those rules.

### **3. Undertaking To Vest In Government :-**

Notwithstanding anything contained in any other law for the time being in force or in any contract or other document, with effect on and from the appointed day, the undertaking shall, by virtue of this Act, stands transferred to and vest in the Government.

### **4. General Effect Of Vesting :-**

(1) The undertaking vested in the Government under section 3 shall be deemed to include the properties, rights, liabilities and obligations specified below, namely:-

(i) all the fixed assets of the licensee in relation to the undertaking and all the documents relating to the undertaking;

(ii) all the rights, liabilities and obligations of the licensee in relation to the undertaking under any other contract hire purchase agreements, if any for the supply of materials or equipments made bona fide before the appointed day;

(iii) all the rights, liabilities and obligations of the licensee in relation to the undertaking under any other contract entered into bona fide before the appointed day, not being a contract relating to the borrowing or lending of money, or to the employment of staff.

(2) all the assets specified in clause (i) of subsection (1) shall vest in the Government free from any debts, mortgages or similar obligations of the licensee or attaching to the undertaking:

Provided that such debts, mortgages or obligations shall attach to the amount payable under this Act to the licensee for such assets.

(3) The license shall be deemed to have terminated on the appointed day and all the right, liabilities and obligations of the licensee under any agreement to supply electricity entered into before that date shall devolve on the Government.

(4) It shall be lawful for the Government, or any officer or servant of the Government or the Board authorized by the Government in this behalf, to take possession of the entire undertaking, or as the case may be, the fixed assets and of all documents relating to the undertaking which the Government may require for carrying on the undertaking , after removing any obstruction, if any, that may be offered.

## **5. Transfer Of Undertaking To The Board :-**

The Government may, by order in writing, transfer the undertaking vested in them under section 3 to the Board on such terms and conditions as may be specified in the order, and, on such transfer, the undertaking, together with all assets, liabilities, rights and obligations which by virtue of this Act have vested in or devolved on the Government shall vest in or devolve on the Board.

## **6. Payment Of Amount :-**

For the transfer to, and vesting in, the Government under section 3, of the undertaking, the Government shall pay to the licensee in cash and in the manner provided in section 10 an amount determined as hereinafter provided.

## **7. Gross Amount Payable To The Licensee :-**

(1) The gross amount payable to the licensee shall be the market value of the undertaking on the appointed day and if there is any difference or dispute regarding such market value the same shall be determined by the arbitrator appointed under section 20.

(2) The market value of the undertaking for the purpose of subsection (1) shall be deemed to be the value of all lands, buildings, works, materials and plant of the licensee suitable to, and used by him, for the purpose of the undertaking, other than service lines or other capital works or any part thereof which have been constructed at the expense of consumers, due regard being had to the nature and condition for the time being of such lands, buildings, works, materials and plant and the state of repair thereof and to the circumstance that they are in such position as to be ready for immediate working and to the suitability of the same for the purpose of the undertaking, but without any addition in respect of compulsory acquisition or of goodwill or of any profits which may be or might have been made from the undertaking or of any similar consideration.

## **8. Effect Of Transactions Not Bona Fide :-**

Where the Government are of opinion that the licensee has on or after the appointed day disposed of any fixed asset whether by way of sale, exchange, gift, leases or otherwise or incurred any expenditure, liability or obligation otherwise than in the normal

course of events, with a view to benefit unduly the licensee or some other person and thereby caused loss to the Government as succeeding owners of the undertaking, the Government shall be entitled to deduct from the amount payable to the licensee under this Act, an amount which they consider to be the loss sustained by them:

Provided that before making such deduction, the licensee shall be given a notice within three months of the appointed day to show cause against such deduction, within a period of fifteen days from the date of receipt of such notice.

## **9. Deduction From The Gross Amount :-**

The Government shall be entitled to deduct the following sums from the gross amount payable under this Act to the licensee, namely:-

- (a) the amount, if any, already paid in advance;
- (b) the amount, if any, which the Government are entitled to deduct under section 8;
- (c) the amount due, if any, including interest thereon, from the licensee to the Board, for energy supplied by the Board before the appointed day;
- (d) all amounts and arrears of interest, if any, thereon, due from the licensee to the Government;
- (e) the amount of all loans due from the licensee to any financial institutions constituted by or under the authority of the Government and arrears of interest, if any, thereon;
- (f) all sums paid by consumers by way of security deposit and arrears of interest due thereon on the appointed day, in so far as they have not been paid over by the licensee to the Government less the amount which according to the books of the licensee are due from the consumers to the licensee for energy supplied by him before that date;
- (g) all advances from consumers and prospective consumers, and all sums which have been or ought to be set aside to the credit of the consumers fund, in so far as such advances of sums have not been paid over by the licensee to the Government;
- (h) the amounts remaining in Tariffs and Dividends Control Reserve, Contingencies Reserve and the Development Reserve in so far as such amounts have not been paid over by the licensee to the Government;
- (i) the amount, if any, relating to debts, mortgages or obligations

as mentioned in the proviso to subsection (2) of section 4:  
Provided that before making any deduction under this section, the licensee shall be given a notice to show cause against such deduction, within a period of fifteen days from the date of receipt of such notice.

#### **10. Manner Of Payment Of Net Amount :-**

(1) The Government shall appoint, by order in writing, a person having adequate knowledge and experience in matters relating to accounts, as Special Officer to assess the net amount payable under this Act by the Government to the licensee, after making the deductions mentioned in section 9.

(2) The Special Officer may call for the assistance of such officers and staff of the Government or the Board or the undertaking as he may deem fit in assessing the net amount payable.

(3) The net amount due to a licensee under this Act shall be paid by the Government to the licensee within one year from the appointed day.

(4) The net amount payable shall bear interest at four per cent per annum from the appointed day.

(5) Where the gross amount payable to the licensee is equal to or less than the total amount to be deducted under section 9, no payment shall be made to the licensee by the Government.

#### **11. Transfer Of Services Of Existing Employees :-**

(1) Every whole time officer or other employee who was immediately before the appointed day, employed in connection with the undertaking shall, on the appointed day, become an officer or employee, as the case may be, of the Government or the Board and shall hold his office by the same tenure, at the same remuneration and upon the same terms and conditions and with the same rights and privileges as to pension, gratuity and other matters as would have been admissible to him if the undertaking had not been transferred to and vested in the Government or the Board, as the case may be, and shall continue to do so unless and until his employment under the Government or the Board, as the case may be, is duly terminated or until his remuneration or terms and conditions of service are duly altered by the Government or the Board, as the case may be.

(2) If any question arises as to whether any person was a whole time officer or other employee in or in connection with the

undertaking immediately before the appointed day, the question shall be referred, within a period of one year from the appointed day, to the Government and the Government shall after giving a reasonable opportunity of being heard to the person concerned in the matter, decide it in such manner as they think fit and such decision shall be final.

(3) Notwithstanding anything contained in the Industrial Disputes Act, 1947 (Central Act 14 of 1947), or in any other law for the time being in force, the transfer of the services of any officer or other employee employed in or in connection with the undertaking to the Government or the Board, shall not entitle such employee to any compensation under that Act or any other law for the time being in force and no such claim shall be entertained by any court, tribunal or other authority.

## **12. Power Of Entry :-**

Any employee of the Government or the Board authorised in this behalf by general or special order by the Government, or the Special Officer appointed under section 10 may, at any time, after giving the licensee reasonable notice, enter upon any land or premises in his possession and make any survey, examination or investigation preliminary or incidental to the purpose of this Act.

## **13. Duty To Deliver Possession Of Properties, Etc :-**

(1) where any property appertaining to the undertaking has been transferred to, and vested in the Government or the Board under this Act-

(a) every person in whose possession, custody or control any such property may be, shall, on demand by the Government or the Board, deliver the property to the Government or the Board, as the case may be, forthwith;

(b) any person who, immediately before such vesting, has, in his possession, custody or control, any books, documents or other papers relating to the undertaking, shall be liable to account for the said books, documents and paper to the Government or the Board, as the case may be, and shall deliver them up to the Government or the Board or to such persons as the Government or the Board may authorise in this behalf.

(2) Without prejudice to other provisions contained in this section it shall be lawful for the Government or the Board to take all necessary steps for taking possession of all properties, which have

been transferred to and vested in them or it under this Act.

#### **14. Penalties :-**

Any person who,-

- (a) having in his possession, custody or control any property forming part of the undertaking wrongfully withholds such property from the Government or the Board; or
  - (b) wrongfully obtains possession of, or retains, any property forming part of the undertaking; or
  - (c) wilfully withholds or fails to furnish to the Government or the Board or any person authorised in this behalf by the Government any books, documents or other paper relating to the undertaking which may be in his possession, custody or control; or
  - (d) fails to deliver to the Government or the Board any assets, books of account, registers or other documents in his possession, custody control relating to the undertaking; or
  - (e) wrongfully removes or destroys any property forming part of the undertaking; or
  - (f) wrongfully uses any property forming part of the undertaking
- shall be punishable with imprisonment for a term which may extent to two years or with fine which may extent to ten thousand rupees, or with both.

#### **15. Offences By Companies :-**

(1) where an offence punishable under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in subsection (1), where any such offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against



and punished accordingly.

Explanation. For the purposes of this section.-

(a) company means any body corporate and includes a firm, society or other association of individuals; and (b) director in relation to-

(i) a firm, means a partner in the firm.

(ii) a society or other association of individuals, means the person who is entrusted, under the rules of the society or other association, with the management of the affairs of the society or other association, as the case may be.

### **16. Protection Of Action Taken In Good Faith :-**

No suit, prosecution or other legal proceeding shall lie against the Government or the Board or any employee of the Government or the Board or the Special Officer appointed under section 10, in respect of anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

### **17. Effect Of Other Laws :-**

(1) No provision of the Electricity Act, the Electricity Supply Act, or any other Act for the time being in force or any rule made under any of those Acts or any instrument including licence having effect by virtue of any of those Acts or any rule made there under, shall, in so far as it is inconsistent with any of the provisions of this Act have any effect.

(2) Save as otherwise provided in this Act, the provisions of this Act shall be in addition to and not in derogation of the Electricity Act and the Electricity Supply Act.

### **18. Power To Remove Difficulties :-**

If any difficulty arises in giving effect to the provisions of this Act the Government may, as occasion may require do anything not inconsistent with the provisions of this Act which appears to them necessary for the purpose of removing the difficulty.

### **19. Cognizance Of Offences :-**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), no court shall take cognizance of any offence against this Act except on a complaint in writing made by the Government or any officer authorised in that behalf by the Government.

(2) Notwithstanding anything contained in section 29 on the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), it shall be lawful for any Magistrate of the First Class specially empowered by the Government in this behalf, to impose a sentence of fine exceeding five thousand rupees when awarding punishment under section 14.

## **20. Arbitration :-**

(1) where any dispute arises in respect of any of the matters specified below, it shall be determined by an arbitrator appointed by the Government, who shall be a sitting or retired District or High Court Judge:-

(a) whether any property belonging, or any right, liability or obligation attaching, to the undertaking, vests in the Government;

(b) whether any fixed asset forms part of the undertaking;

(c) whether any hirepurchase agreement or other contract referred to in clause (ii) or clause (iii) of sub section (1) of section 4 has been entered into bona fide or not.

(2) Subject to the provisions of this section, the provisions of the Arbitration Act, 1940 (Central Act 10 of 1940), shall apply to all arbitrations under this Act.

## **21. Power To Make Rules :-**

(1) The Government may, by notification in the Gazette, make rules to carry out the purposes of this Act.

(2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Legislative Assembly for a period of fourteen days which may be comprised in one session or in two successive sessions and if before the expiry of the session in which it is so laid or the session immediately following, the Legislative Assembly makes any modification in the rule or decides that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

## **22. Repeal And Saving :-**

(1) The Kottayam Electric Supply Agency (Undertaking) Acquisition Ordinance, 1980 (2 of 1980), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.